



**IT IS ORDERED**

**Date Entered on Docket: December 7, 2018**

**The Honorable David T. Thuma  
United States Bankruptcy Judge**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

**IN RE:**

**Orville E Priestley, Jr aka Gene Priestley aka Orville Eugene Priestley, Jr.,**

**Debtor.**

**Case No. 18-12109-tl7**

**DEFAULT ORDER GRANTING RELIEF FROM STAY AND  
ABANDONMENT OF PROPERTY LOCATED AT  
426 N. Miranda, Las Cruces, NM 88005**

This matter came before the Court on the Motion for Relief from Stay and Abandonment of Property filed on 10/31/2018, Docket No. 15 (the “Motion”), by Nationstar Mortgage LLC d/b/a Champion Mortgage Company (“Movant”). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed,

**FINDS:**

(a) On 10/31/2018, Movant served the Motion and notice of the Motion (the “Notice”) on counsel of record for Debtor, Orville E Priestley, Jr, and the case trustee, Philip J. Montoya, (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and

NM LBR 9036-1, and on the Debtor and US Trustee by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014;

(b) The Motion relates to the following property legally described as:

***“See Exhibit A”***

and commonly known as: 426 N. Miranda, Las Cruces, NM 88005;

(c) The Notice specified an objection deadline of 21 days from the date of service of the Notice, to which three days was added under Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on 11/26/2018;

(f) As of 12/5/2018, no objections to the Motion have been filed;

(g) The Motion is well taken and should be granted as provided herein; and

(h) By submitting this Order to the Court for entry, the undersigned counsel for Movant certifies under penalty of perjury that on 12/5/2018, McCarthy & Holthus, LLP searched the data banks of the Department of Defense Manpower Data Center (“DMDC”) and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

**IT IS THEREFORE ORDERED:**

1. Pursuant to 11 U.S.C. §362(d), Movant and any and all holders of liens against the Property, of any lien priority, are hereby granted relief from the automatic stay:

(a) To enforce their rights in the Property, including foreclosure of liens and a foreclosure sale, under the terms of any prepetition notes, mortgages, security agreements, and/or other agreements to which Debtor is a party, to the extent permitted

by applicable non-bankruptcy law, such as by commencing or proceeding with appropriate action against the Debtor or the Property, or both, in any court of competent jurisdiction; and

(b) To exercise any other right or remedy available to them under law or equity with respect to the Property.

2. The Property is hereby abandoned pursuant to 11 U.S.C. §554 and is no longer property of the estate. Creditor shall not be required to name the Trustee as a defendant in any action involving the Property or otherwise give the Trustee further notice.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as a defendant in litigation to obtain an *in rem* judgment if Debtor is granted a discharge, or to foreclose the Property in accordance with applicable non-bankruptcy law. Nothing contained herein shall preclude Creditor or and any and all holders of liens against the Property, from proceeding against the Debtor personally, to collect amounts due, if Debtor's discharge is denied or if Debtor's bankruptcy is dismissed.

4. This Order shall continue in full force and effect if this case converted to a case under another chapter of the Bankruptcy Code.

5. This Order is effective and enforceable upon entry. The 14-day stay requirement of Fed.R.Bankr.P. 4001(a)(3) is waived.

6. Movant is further granted relief from the stay to engage in loan modification discussions or negotiations or other settlement discussions with the Debtor and to enter into a loan modification with the Debtor.

###END OF ORDER###

**RESPECTFULLY SUBMITTED BY:**

/s/ Daniel Grunow  
**McCarthy & Holthus, LLP**  
**Daniel Grunow, Esq.**  
**Attorney for Movant,**  
**6501 Eagle Rock NE, Suite A-3**  
**Albuquerque, NM 87113**  
**(505) 219-4900**  
/s/ submitted electronically 12/6/2018  
**dgrunow@mccarthyholthus.com**

**COPIES TO:**

**DEBTOR**

Orville E Priestley, Jr  
426 N. Miranda  
Las Cruces, NM 88005

**DEBTOR(S) COUNSEL**

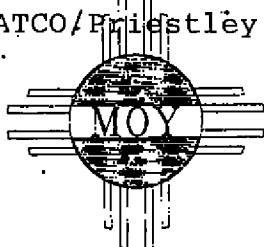
R Trey Arvizu, III  
trey@arvizulaw.com

**CASE TRUSTEE**

Philip J. Montoya  
pmontoya@swcp.com

**US TRUSTEE**

PO Box 608  
Albuquerque, NM 87103-0608



# MOY SURVEYING, INC.

414 N. DOWNTOWN MALL LAS CRUCES, N.M. 88001  
PHONE: (505) 525-9683 - FAX (505) 524-3238

## EXHIBIT "A"

APRIL 6, 2005

### DESCRIPTION OF A 0.243 ACRE TRACT

A tract of land situate in the City of Las Cruces, Dona Ana County, New Mexico, being the South 67 feet of Lot 13-18, Block 9, New Mexico Town Company Addition, filed September 9, 1887, in Book 2, Page 9, Dona Ana County records and the West 8 feet of a vacated 16 foot wide alley and being more particularly described as follows, to wit;

Beginning at an iron pipe found on the North line of a 16 foot wide alley and the East line of Miranda Street, being identical to the Southwest corner of Lot 18, Block 9, New Mexico Town Company Addition, filed September 9, 1887, in Book 2, Page 9, Dona Ana County records;

Thence from the point of beginning and along the East line of Miranda Street N.23°38'00"W., 67.00 feet to an iron pipe found for the Northwest corner of this tract;

Thence leaving the East line of Miranda Street, N.66°22'00"E., 158.00 feet to a 1/2" iron rod set on the centerline of a vacated 16 foot wide alley for the Northeast corner of this tract;

Thence along the centerline of said vacated 16 foot wide alley, S.23°38'00"E., 67.00 feet to a point for the Southeast corner of this tract;

Thence along the North line of a 16 foot wide alley S.66°22'00"W., 158.00 feet to the point of beginning, containing 0.243 acre of land, more or less. Subject to any easements and restrictions of record.

Information in the preparation of this description derives from Warranty Deed filed April 4, 1999, in Clerks Book 174, Page 1046, and Resolution No. 95-152, Statement of Vacation, Dona Ana County record. Field notes by MOY SURVEYING INC., License #5939.

Job #05-0654

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## EXHIBIT A



State of New Mexico  
County of Dona Ana  
RECEPTION NO. 102791

I hereby certify that this  
instrument was filed for  
recording and duly recorded on

APR 22 2005

at 5:00 o'clock P.M.  
Book 1023 Page 1013-1021  
of the Records of said County  
REDA CLERK, DONA ANA COUNTY  
12/07/18 11:22 AM Page 5 of 5